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**(2005) 12 CAL CK 0016**  
**In the Calcutta High Court**  
**Case No : F.A.T. No. 1462 of 2005**

ICICI Bank Ltd.

APPELLANT

Vs

Garodia Vyapar Pratisthan

RESPONDENT

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**Date of Decision :** 09-12-2005

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2006) 1 CHN 164

**Hon'ble Judges :** Bhaskar Bhattacharya, J; Arun Kumar Bhattacharya, J

**Bench :** Division Bench

**Advocate :** Hirak Mitra, S.S. Roy, Amalendu Mitra and P. Ghosh, for the Appellant; Harish Tandon and Aniruddha Chatterjee, for the Respondent

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## Judgement

Arun Kumar Bhattacharya, J.—The hearing arises from an application u/s 5 of the Limitation Act filed by the defendant/appellant praying for condonation of delay for 250 days in preferring the appeal against the judgment and decree dated 23.07.2004 passed by the Id. XIIth Bench, City Civil Court at Calcutta in T. S. 1997/95 declaring the plaintiff/respondent as bona fide purchaser of the shares as described in Schedule "A" to the plaint and restraining the present petitioner from transferring, assigning and/or registering the shares to any other person.

2. The petitioner's contention as per above application is that despite its instruction to the Id. erstwhile Advocate to oppose the matter, he did not intimate anything regarding development of the case, and when the petitioner's officer met him he could not apprise him the order passed by the Court as the brief was misplaced. The matter was then withdrawn from him and was given to Mr. M.K. Seal, Advocate of M/s. Sandersons & Morgans for taking necessary steps. Mr. Seal sought for instructions from the petitioner on informing the gist of the order of the Court. On instruction from the petitioner Mr. Seal applied for certified copy of the order on 15.02.2005 which was supplied to the petitioner on 01.03.2005. On being instructed by the petitioner, Mr. Seal drew up a draft of the Memorandum of Appeal and stay application and sent the same to the petitioner

in May, 2005, and the appeal was ultimately filed on 29.04.2005. Such delay in preferring the appeal was due to misplacement of papers.

3. Mr. Mitra, Id. Counsel for the appellant/petitioner, advanced argument contending that the aforesaid delay of 250 days was solely due to the loss or misplacement of brief by the erstwhile Advocate, for which he could neither inform about gist of the order of the Id. Court below to the petitioner nor could take any step and as such the said ground for the delay being beyond the control of the petitioner, delay may be condoned. Mr. Tandon, Id. Counsel for the respondent, on the other hand, on referring to the various correspondence between the Advocate of his client and the petitioner and their Advocate contended that soon after passing of the decree on 23.07.2004, the matter was communicated directly to the petitioner by registered post as also by speed post requesting for necessary action at their end followed by three reminders in 2004 and two in 2005, the last being final reminder on 30.03.2005. Mr. Tandon further contended that on the request of Mr. Asish Kumar Guha, Id. Advocate of the petitioner vide his letter dated 10.09.2004, a copy of the judgment was also supplied to him, and on the face of the said letters/ correspondence the petitioner's contention that they were in the dark about the order of the Court does not at all stand, and as such the appeal being hopelessly barred by limitation, condonation of such abnormal delay should not be allowed.

4. To start with, the present appeal was filed on 29.04.2005, and so the averment in the application that the drafts of the Memorandum of Appeal and stay application were sent by Mr. Seal to the petitioner's office in May, 2005, needless to mention, is not at all correct, since if the drafts were sent in May, 2005 for approval, there was no scope for filing the appeal on 29.04.2005.

5. Nevertheless, delay in preferring appeal may be condoned if sufficient cause is shown. In the case on hand, the decree was passed on 23.07.2004 and it was communicated by the respondent's Id. Advocate through a letter dated 29.07.2004 to the petitioner requesting for informing them the formalities to be complied with for the purpose of issuing duplicate share certificate, which was sent by registered post as also speed post and delivered to the petitioner on that very date. It was followed by three reminders dated 07.09.2004, 14.10.2004 & 04.12.2004, all of which were sent by registered post with AD as also speed post and the first two were delivered to the petitioner on 08.09.2004 and 14.10.2004 respectively. On receipt of the said reminder dated 14.10.2004 the petitioner replied by a letter dated 01.11.2004 informing the respondent's Advocate that they had solicited certain details from their Advocate in connection with the matter and on receipt of a detailed report with regard to the correspondence made between them and the respondent from ICICI InfoTech they would get in touch with the respondent for issuance of shares. By a letter dated 10.09.2004 petitioner's Advocate Asish Kumar Guha requested the respondent's Advocate to supply a xerox copy of judgment/decreed which was duly complied with on 13.09.2004, and it was also intimated by the respondent's Advocate to the

petitioner in the 4th reminder dated 31.01.2005 which was received by the petitioner's Advocate, Bombay Office and ICICI Infotech on 02.02.2005, 16.02.2005 and 04.02.2005 respectively. The last or final reminder dated 30.03.2005 from the respondent's Advocate to the petitioner at its Calcutta and Bombay offices and ICICI Infotech, sent by registered post with AD, was received by the petitioner's Advocate on 30.03.2005, 04.04.2005, 25.04.2005 & 02.04.2005 respectively.

6. Mr. Asish Kumar Guha, Id. Advocate for the petitioner, in his affidavit contended that due to his professional pre-occupation he could not communicate the development of the case to his client nor could apply for certified copy of the judgment.

7. A glance to the above will reveal that not only the petitioner was communicated with the gist of the order within six days from the date of the order but also a xerox copy of the judgment was delivered to their Id. Advocate Mr. Guha within three days from their request on 10.09.2004 and despite repeated reminders from the end of the respondent the petitioner did not take any step and deliberately allowed the appeal to be time-barred. That the petitioner was in the dark of the order as contended is belied by the above correspondence. It is purely a case of inaction and sheer negligence on the part of the petitioner as also their Advocate, and the law does not favour it. Even though mistake of a Counsel cannot as a general rule be sufficient cause, in certain circumstances it may be sufficient ground if it was bona fide i.e. made in spite of due care and attention. If it is to cover an ulterior purpose such as laches of the party or an attempt to save limitation in an underhand way the delay cannot be condoned, as was held in the case of Mata Din Vs. A. Narayanan, . There is no general principle saving the party from all mistakes of his counsel. If there was negligence deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite party should be exposed to a time-barred appeal, as was observed in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, .

8. Accordingly, the petitioner having failed to show sufficient cause and it being a case of inaction and sheer negligence, there is no scope for condonation of the said abnormal delay, and accordingly the application be dismissed.

Bhaskar Bhattacharya, J.

I agree.

Later:

9. In view of dismissal of the application for condonation of delay, the connected appeal should be dismissed as barred by limitation and the same is dismissed accordingly.

10. In view of dismissal of the appeal itself, the other application for stay being CAN No. 6180 of 2005 filed in connection with the appeal has become

infructuous and the same is disposed of accordingly

11. Let xerox certified copies of this order, if applied for, be given to the learned Advocate for the parties within a week from today on compliance with requisite formalities.